

railroad corporation as if such stock or securities had been transferred to such persons as shareholders pursuant to the nonrecognition provisions of part III, subchapter C, chapter 1 of the Code. The determinative and controlling factors are the railroad corporation's insolvency and the effective command by the creditors over its property. The term *insolvent* as used in this section refers to insolvency at any time during the course of the proceeding referred to in section 374(a)(1), either in the sense of excess of liabilities over assets or in the sense of inability to meet obligations as they mature.

(5) A short-term purchase money note is not a security within the meaning of this section, and the transfer of the properties of the insolvent railroad corporation for cash and deferred payment obligations of the transferee evidenced by short-term notes is a sale and not an exchange.

(b) *Exchange for stock or securities and other property or money.* If an exchange would be within the provisions of section 374(a)(1) if it were not for the fact that the consideration for the transfer of the property of the insolvent railroad corporation consists not only of stock or securities but also of other property or money, then, as provided in section 374(a)(2), if the other property or money received by the railroad corporation is distributed by it pursuant to the plan of reorganization, no gain to the railroad corporation will be recognized. Property is distributed within the meaning of this section if it is paid over or distributed to shareholders or creditors who have by appropriate legal steps obtained effective command of the property of the railroad corporation. If the other property or money received by the railroad corporation is not distributed by it pursuant to the plan of reorganization, the gain, if any, to the railroad corporation from the exchange will be recognized in an amount not in excess of the sum of money and the fair market value of the other property so received which is not distributed. In either case no loss from the exchange will be recognized (see section 374(a)(3)). See section 354(c) relative to exchanges by stock or security holders.

[T.D. 6528, 26 FR 400, Jan. 19, 1961]

§ 1.374-2 Basis of property acquired after December 31, 1938, by railroad corporation in a receivership or railroad reorganization proceeding.

Section 374(b)(1) provides that if property of a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)), was acquired after July 31, 1955, in pursuance of an order of the court having jurisdiction of such corporation in either a receivership proceeding or a proceeding under section 77 of the Bankruptcy Act, and the acquiring corporation is also a railroad corporation as defined in section 77(m) of such Act, organized or availed of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the transferor railroad corporation, increased in the amount of gain recognized to the transferor under section 374(a)(2) and paragraph (b) of § 1.374-1. For purposes of section 374(b)(1), it is unnecessary that the acquisition in question be a direct transfer from the corporation undergoing reorganization or that such reorganization constitute a reorganization within the meaning of section 368(a) since that section does not apply to part IV, subchapter C, chapter 1 of the Code. It is sufficient if the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganization plan approved by the court having jurisdiction of the proceeding. If the transaction falls within the provisions of section 374(b)(1), the basis of the property involved shall be determined pursuant to such provisions, notwithstanding that the transaction might also fall within another basis provision.

[T.D. 6528, 26 FR 401, Jan. 19, 1961, as amended by T.D. 7616, 44 FR 26870, May 8, 1979]

§ 1.374-3 Records to be kept and information to be filed.

(a) *Return information.* Each railroad corporation a party to a section 374(a) reorganization shall furnish a complete statement of all facts pertinent to the recognition or nonrecognition of gain or loss in connection with the exchange, including:

(1) A certified copy of the plan of reorganization approved by the court in

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the proceeding, together with a statement showing in full the purposes thereof and in detail all transactions incident, or pursuant, to the plan;

(2) A complete statement of the cost or other basis of all property, including all stock or securities, transferred incident to the plan;

(3) A statement of the amount of stock or securities and other property or money received in the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities or other property shall be stated on the basis of the fair market value thereof at the date of the exchange;

(4) A statement of the amount and nature of any liabilities assumed upon the exchange.

The information required by this paragraph shall be filed as a part of each railroad corporation's return for its taxable year within which the reorganization occurred.

(b) *Permanent records.* Permanent records in substantial form must be kept by every railroad corporation which participates in a tax-free exchange in connection with a section 374(a) reorganization showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed upon the exchange), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

[T.D. 6528, 26 FR 401, Jan. 19, 1961]

§ 1.374-4 Property acquired by electric railway corporation in corporate reorganizing proceeding.

Subject to the limitations and conditions set forth in section 374(b)(2), if the reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 501 and following) of an electric railway corporation results in the acquisition of the property of such corporation by another corporation, the basis of such property in the hands of the acquiring corporation is the same as it would be in the hands of the old corporation. It is requisite to the application of the section that both corporations be street, suburban, or interurban electric

railway corporations engaged in the transportation of persons or property in interstate commerce, and that the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganizing plan approved by the court having jurisdiction of the proceeding. If section 374(b)(2) applies, section 270 of the Bankruptcy Act (11 U.S.C. 670), relating to the adjustment of basis by reason of the cancellation or reduction of indebtedness in a corporate reorganization proceeding, is inapplicable. Moreover, if the transaction is within the provisions of section 374(b)(2) and may also be considered to be within any other basis provision, then the provisions of section 374(b)(2) only shall apply.

[T.D. 7616, 44 FR 26870, May 8, 1979]

CARRYOVERS

§ 1.381(a)-1 General rule relating to carryovers in certain corporate acquisitions.

(a) *Allowance of carryovers.* Section 381 provides that a corporation which acquires the assets of another corporation in certain liquidations and reorganizations shall succeed to, and take into account, as of the close of the date of distribution or transfer, the items described in section 381(c) of the distributor or transferor corporation. These items shall be taken into account by the acquiring corporation subject to the conditions and limitations specified in sections 381, 382(b), and 383 and the regulations thereunder.

(b) *Determination of transactions and items to which section 381 applies*—(1) *Qualified transactions.* Except to the extent provided in section 381(c)(20), relating to the carryover of unused pension trust deductions in certain liquidations, the items described in section 381(c) are required by section 381 to be carried over to the acquiring corporation (as defined in subparagraph (2) of this paragraph) only in the following liquidations and reorganizations:

(i) The complete liquidation of a subsidiary corporation upon which no gain or loss is recognized in accordance with the provisions of section 332, but only if the basis of the assets distributed to